SPEECH

OF

HON. W. L. UNDERWOOD, OF KENTUCKY,

AGAINST

THE ADMISSION OF KANSAS AS A STATE

UNDER

THE LECOMPTON CONSTITUTION.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, MARCH 30, 1858.

WASHINGTON:
1858.

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SPEECH.

The House being in Committee of the Whole, and having under consideration the deficiency bill—

Mr. UNDERWOOD said:

Mr. CHAIRMAN: I rise to essay no effort at elocution, nor any extended observations upon the vexed question of Kansas. Contemplating that question from a point of view differing from that of most if not all others that have addressed you, entertaining in regard to it opinions that have not yet found expression, duty to myself demands that I should announce the reasons that shall control my action.

To those who know me at home I shall have no occasion to defend myself against any charge of intentional infidelity to the South and her cherished institutions. From the dawn of my humble political career, until now, they have had no more devoted friend than I. Born in a slave State, having lived in one all my life, a large owner of slaves, and representing one of the largest slave districts in the Union, it would be nothing short of impossibility for me to become faithless to its real interests. I have heretofore expressed my opinions on this floor with sufficient fullness upon the subject of the relations of master and slave. I will not repeat them. It is sufficient for me to say that I honestly regard them as the best possible relations which can exist between two dissimilar and unequal races of men thrown together upon the same territory, and that every attempt to create other relations than these, whilst the two races thus coexist, has thus far only deepened the degradation and misery of the black race. I should, therefore, instead of circumscribing slavery, be perfectly willing to see it extended, with the consent of those immediately interested, to the remotest confines of the republic. It is not, then, because, in any possible form, I am opposed to slavery, that I am opposed to the Lecompton constitution for Kansas. Indeed, rather, it is because I am the friend and advocate of the peculiar institutions of the South that I am in part constrained to object to that constitution.

Mr. Chairman, there are new theories of government and motives of action presented by the advocates of the Lecompton constitution that cannot fail to grate harshly on southern ears: 1st. In order to induce our assent to the admission of Kansas under the Lecompton constitution—which constitution provides that "after the year 1864, whenever the legislature shall think it necessary to amend, alter, or change this constitution"—they shall proceed to do so according to certain salutary precautions and methods prescribed in the instrument, it is now contended that this fundamental provision may be disregarded, and that steps may be immediately taken to abolish it so soon as Kansas is admitted under it. The people of the United States have heretofore been taught to regard constitutions as the sacred repositories of their dearest rights—as removed, by the solemnities by which they have been inaugurated, from the flippancies of change—and as constituting the bulwarks upon which they might repose in the security of established order. But now, for the purpose of making room for this new comer, all these established theories of government

are forsaken, and pass away as the baseless fabric of a dream. A new light dawns upon the political sky, and anarchy is organized. Constitutions, which were intended heretofore for the protection of minorities, lose their power. Majorities, we are told, at their pleasure, may cast them down, and riot on the rights which constitutions were intended to preserve inviolate. The distinctions heretofore so well understood and recognized between a legislative act and a constitutional provision is no more, and the only step which remains to be taken, since the all-prevailing voice of mere numbers is enshrined, is to declare that this voice need not even proclaim its edicts in written laws, but has only, in the fury of the mob, to issue its mandates, and execute them. Strangest to me of all this is, that this wild doctrine finds countenance with my southern friends, interested, like me, in preserving and maintaining to the last our southern rights and our southern property. Why, sir, with such governmental policy as this, not only will the general prosperity sicken—for all the interests of society must sicken with the instability of government—but the peculiar institutions of the South *must die*. Let me read you what is already said by a black republican organ, the Chicago Tribune, on this subject:

"It is now said that the act admitting Kansas into the Union, under the Lecompton constitution, will contain a clause declaring that the people of the new State may amend their constitution at any time they please, though in doing so they violate a plain and emphatic provision of the constitution itself. With this power to overhead constitutional barriers, recognized by solemn act of Congress, we shall be disposed to abate our opposition to Lecompton and help it along; but with this express understanding, that the rule laid down for Kansas shall be applied to the Constitution of the United States; and that when a majority of the legal voters of the republic choose to demand an amendment of the fundamental law, the mode of amendment prescribed in the Constitution shall not stand in the way of the attainment of their will."

Mr. CHAIRMAN, I enter my solemn protest against this suicidal doctrine. Kansas, with her Lecompton constitution, brings with her no benefits to any part of our common country which would compensate a solitary State for the damning tendency of such a dogma. And if it shall be inaugurated into the political theories of the times by the present administration, I shall preserve the proud consciousness of saying that it was by no act of mine you did it, and, therefore, "shake not your gory locks at me."

But it may possibly be said (I hardly think that any candid man will venture to say it) that this principle, touching the right of the majority to override the terms and forms of the constitution by amendments, alterations, or abrogations, in violation of those terms, is not contained in the act passed by the Senate. Mr. Chairman, *it is there*, and, I grieve to say, *insidiously there*. If it is to be there at all, put it in like a man. Speak it out like a free man. Let us have no quibbling about it. But it is there plain enough. The honorable senator [Mr. PUGH] proposed in plain, direct terms to insert it. His amendment was withdrawn by himself, because, as he said, its substance was embodied in the bill as it now stands; and it was thus withdrawn to make room for the more insidious and entrapping provisions now contained in the bill, to wit: "that nothing in this act shall be construed to abridge or infringe any right of the people, asserted in the constitution of Kansas, at all times to alter, reform, or abolish their form of government in such manner as they may think

proper." Why was this clause inserted? Does anybody suppose that, if Kansas should become a State, she would thereafter be dependent on Congress for her right "to reform or abolish her form of government in such manner as she thought proper?" Certainly not. For what purpose, then, was this formal disclaimer of a power or right of Congress to do that which no one ever supposed before Congress had the power to do asserted in this bill? It was, Mr. Chairman, a negative pregnant of most affirmative meaning. It is a direct intervention by Congress in the affairs of Kansas, in violation of your cry of non-intervention. Your President, sir, had, in a labored argument, in his Kansas message, announced the doctrine that "a majority can make and unmake constitutions at pleasure. It would be absurd to say they can impose fetters upon their own power which they cannot afterwards remove. * * * If, therefore, the provision changing the Kansas constitution after the year 1864 could, by possibility, be construed into a prohibition to make such a change previous to that period, this prohibition would be wholly unavailing. The legislature already elected may, at its very first session, submit the question to a vote of the people, whether they will or will not have a convention to amend their constitution, and adopt all necessary means for giving effect to the popular will." It was necessary, therefore, to insert these provisions in the bill; but lest an outspoken expression of them should justly offend the public ear, and justly alarm the settled and conservative elements of society, they have been couched in the covert and ambiguous phrase quoted in the law. But they will not the less confidently be appealed to as the expression of the legal right, in the abolition portion of the people of Kansas, to abolish the few remnants of slavery that exist in that devoted Territory on the instant, should Kansas be admitted under the Lecompton constitution. And then will come, sir, in the event Kansas is thus admitted into the Union with her Lecompton constitution, under the provisions of this act of admission, one of those struggles, weak and feeble perhaps it may be, compared with others which I yet contemplate in her eventful history, a struggle in which her peace may be seriously jeoparded, and the rights of the slaveholder—rights which I feel it my duty here to forewarn, if I cannot forearm—will inevitably be sacrificed. According to the programme thus suggested by the President, and significantly and obsequiously intimated to Kansas by the Senate bill, a new constitution will be adopted prior to 1864, in disregard of the Lecompton constitution. It will abolish slavery; the slaveholders in Kansas will assert their rights under the Lecompton constitution, wrongfully overturned, in violation of the provisions for its own amendment; and I do not hesitate to declare my opinion that there is not an enlightened jurist in America but will recognize their claim. That agitation, bitterness, and strife will result, even from this comparatively minor conflict, no one can doubt; and, I ask, is it the part of statesmanship thus to legislate in blind disregard of such inevitable consequences?

Mr. Chairman, the great excellency of American liberty is, that it is the liberty of law. The President, in the principles which I have thus deduced from his Kansas message, proclaims the European idea of liberty, which is the liberty of license. The one is peaceful, the other rebellious. He attempts to fortify his specious conclusions by

a reference to those grand fundamental principles of human liberty which underlie all free governments, and which, in proper cases, are the last resorts of nations No people so well as ours knows the right of revolution, and none, thank God, in a most righteous cause, God being our helper, have asserted it so triumphantly. I trust, however, that no legislative or political necessity will ever compel any portion of our beloved country again to resort to this terrible arbitrament. And if I had no other reason for voting against the admission of Kansas under the Lecompton constitution, I should be justified in doing so, in order to avoid the dread expedient approximating revolution, to which the President refers the people of Kansas, whereby to extricate themselves from the difficulty in which his policy has involved them, by a change of their constitution, regardless of the forms and methods prescribed in the constitution itself.

The second of the motives which are urged upon us is, that it is the shortest way to make Kansas a free State. The President, in his Kansas message, after correctly stating that Kansas is now a slave Territory, tells us, in this remarkable language: "Slavery can, therefore, never be prohibited in Kansas, except by means of a constitutional provision, and in no other manner can this be obtained so promptly, if a majority of the people desire it, as by admitting it into the Union under its present constitution."

Mr. Chairman, when I consider this opinion of the President, in connexion with the means he suggests of effecting the object of making Kansas a free State, to wit: by the unauthorized alteration of her constitution in the manner I have stated, I cannot forbear the expression of my surprise at the support which his purpose and his policy receive at the hands of the south. For myself, I am free to declare that I am not anxious to pursue that path which shall most promptly admit Kansas into the Union as a free State—not that I would throw obstacles in the way of the admission of a State, whether slave or free, into the Union, when justly entitled to come in—but when I consider how rapidly the number of free States has increased and is increasing; that the safe equality that so long existed between the free and slave States has passed away, giving place to an existing preponderance in favor of the former, to be augmented by other free States pressing at our doors for admission; more than this, when I consider who are likely to come, as the senators of Kansas, to take their places here—Lane and Robinson, perhaps, reeking with bitterness and wrath against the institutions of the south, from the fierce conflicts and raids in which so long and recently they have been engaged—I confess to no indecent haste for the admission of Kansas; and the last thing, I think, that ever I shall be guilty of doing will be to dissolve the union of these States because she is not admitted "so promptly" to swell the tide of political ascendency that beats already so heavily against the south.

In this connexion, Mr. Chairman, I would invite your attention to a most singular fact—singular, indeed, it would be if it did not recur in every phase of democratic policy and tactics. It is the rare and singular facility—I should rather call it *craft*—of the democratic party to give to all their measures a northern and a southern aspect. In no instance have they succeeded so well, I ween, as in this. They did apprentice work in the repeal of the Missouri Compromise, when they

declared in the north it was a measure of freedom, and in the south that it was the unlocking of the Territories for the expansion of slavery; they did journeymen's work in their divers interpretations of squatter sovereignty, suited to all latitudes and localities; and they are doing master work now, when this very measure of the admission of Kansas under the Lecompton constitution is advocated by the President and his northern supporters as the "*promptest*" manner of prohibiting slavery in that State, whilst their southern brethren are advocating it, and are ready to split the Union about it, becauses it recognizes slavery north of 36° 30′—albeit, it shows its head there for a moment and disappears thenceforth forever. You are too familiar with the bold and ardent declarations of my southern friends to require me to cite instances to prove the burning zeal with which they contemplate and advocate admission under the Lecomption constitution. It will be more novel, and not less instructive, that I quote to you what John Van Buren, the most sagacious of the democratic abolitionists of the north, declares on the same subject. In his celebrated speech at Tammany Hall, he says:

"By admitting Kansas into the Union, you put her in a condition where she can cure all this evil—stop fraud, and make herself a free State; and those men from the free States who refuse this opportunity to admit Kansas with this population and their disposition to make the State free, and who would keep her out as a slave State, as she now is, until the population is thrown there to make her permanently a slave State, will have to answer to their constituents for the result they have thus produced."

And this sentiment, we are told, was received with "applause" by the vast democratic audience assembled to hear him. Why, Mr. Chairman, John Van Buren did not announce a new democratic policy at the north. Let me read to you from a handbill for a democratic meeting at Mifflinsburg, Pennsylvania, September, 1856:

"Democrats! whigs! republicans! turn out and learn the fact that it is the democratic party that is laboring for freedom for Kansas, the assertions of opposition orators to the contrary notwithstanding."

I could quote from Dix, and other orators of this political school, but I forbear. I however affirm that the northern democratic advocates of the Lecompton constitution all maintain this view, contending that it is another measure for freedom. Should not these bold contrasts, then, teach forbearance to our extreme southern friends? especially when they were told the other day on this floor, by one of their northern allies, that the north got the oyster whilst the south got the shell, in this division of the spoils. Are they not, at least, sufficient to silence the cry of "abolitionism," which, I doubt not, is preparing to be raised throughout the south against all those who shall dare to resist this measure, so really destructive of every principle the south should hold sacred and inviolate? But, Mr. Chairman, more than this, is it not time for us to have a straightforward and honest policy? Have we not been paltered with long enough in a double sense? How much longer will the south—or the north either—suffer itself to be deluded thus with fallacious hopes, having the word of promise kept to the ear but broken to the hope? For myself, I am weary of the Janus face and the forked tongue.

I desire now, Mr. Chairman, to invite your attention to the questions: 1st. Is the Lecompton constitution of such legal validity and

force as to claim adoption from its inherent legality? and 2d. If legal in form, are there not facts connected with it that render it invalid? And, first, as to its legality: I shall not go back to inquire into the validity of the territorial legislatures of Kansas. I shall take them for granted, for all the purposes of my argument, however great and grating may have been the improprieties practiced in the earlier elections under the territorial law. Nevertheless, those legislatures have been recognized, and must be considered the legislative branch of the *de facto* government of Kansas; and I shall concede to them the right to exercise all powers delegated to them by the authority which created them, to wit: the Kansas-Nebraska act. It will not be contended that the legislature of a Territory can exercise, like the legislature of a State, any independent, sovereign powers. The legislature of a Territory is but the creature of the law establishing the Territory, and has no power to step beyond it. It then becomes material to inquire what powers did Congress confer upon the Kansas legislature? The language of the act is: "That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and this act." I would venture an original argument upon the nature and extent of this qualified and limited legislative power, if argument upon it had not long ago been merged in authority, and that authority so high with those to whom I would commend it, that nothing is wanting to give it absolute command. Upon the admission of Arkansas, during the administration of President Jackson, the question arose, how far the territorial legislature was competent to inaugurate the preliminary measures to cast off its territorial existence, and to prepare to assume the attitude of a State? This question was submitted to his Attorney General, Mr. Butler, who used the following language:

"To suppose that the legislative powers granted to the general assembly include the authority to abrogate, alter, or modify the territorial government established by the act of Congress, and of which the assembly is a constituent part, would be manifestly absurd. The act of Congress, so far as it is consistent with the Constitution of the United States, and with the treaty by which the territory, as a part of Louisiana, was ceded to the United States, is the supreme law of the Territory; it is paramount to the power of the territorial legislature, and can only be revoked or altered by the authority from which it emanated. The general assembly and the people of the Territory are as much bound by its provisions, and as incapable of abrogating them, as the legislatures and people of the American States are bound by and incapable of abrogating the Constitution of the United States. It is also a maxim of universal law, that when a particular thing is prohibited by law, all means, attempts, or contrivances to effect such thing are also prohibited. Consequently, it is not in the power of the general assembly of Arkansas to pass any law for the purpose of electing members to form a constitution and State government, nor to do any other act, directly or indirectly, to create such new government. Every such law, even though it were approved by the governor of the Territory, would be null and void. If passed by them, notwithstanding his veto, by a vote of two-thirds of each branch, it would still be equally void."

This was the ground taken by the administration of General Jackson in regard to Arkansas, and the position is an unanswerable one. Any law passed by the territorial legislature of Kansas—which possessed no greater authority than the territorial legislature of Arkansas—initiating a convention, is utterly null and void.

In addition to this, I present you the authority of Mr. Buchanan, the present distinguished Chief Magistrate of the United States, whose early counsels are so worthy of the consideration of his later years, and who, upon the occasion of the admission of Michigan, expressed himself in the following emphatic language:

"We ought not to apply the rigid rules of abstract political science too rigorously to such cases. It has been our practice heretofore to treat our infant Territories with parental care, to nurse them with kindness, and when they had attained the age of manhood, to admit them into the family without requiring from them a rigid adherence to forms. The great questions to be decided are: Do they contain a sufficient population? Have they adopted a republican constitution? And are they willing to enter the Union upon the terms which we propose? If so, all the preliminary proceedings have been considered but mere forms, which we have waived in repeated instances. They are but the scaffolding of the building, which is of no further use after the edifice is complete We have pursued this course in regard to Tennessee, to Arkansas, and even to Michigan. No senator will pretend that their territorial legislatures had any right whatever to pass laws enabling the people to elect delegates to a convention for the purpose of forming a State constitution. It was an act of usurpation on their part."

And on the same subject, Mr. Calhoun, the brightest constitutional luminary of all, used the following brief but emphatic words:

"My opinion is, and ever was, that the proceeding of the people of Michigan, in taking the first steps to form a State constitution without waiting for the assent of Congress, was revolutionary."

If these quotations fail to convince, then, so far as my democratic auditors extend, they would not be convinced though one rose from the dead. But to obviate these high authorities and these unanswerable arguments, it is now stated that the Kansas-Nebraska act is itself an enabling act, dispensing with all others. Unfortunately for those who affirm this, it proves too much for them. That act, it is true, "leaves the people perfectly free to form their domestic institutions in their own way, subject only to the constitution." Prior to it the people had been restrained in this "perfect freedom" by the provisions of the Missouri compromise line, which prohibited slavery north of 36° 30′ north latitude; and this provision was intended merely to apply to the condition and privileges of the people, when, subsequent to the repeal of this line, they should come legally to form their domestic institutions in their own way, and was not intended to confer upon them any new powers or privileges, contrary to the consent of Congress, whereby they might at pleasure cast off their territorial allegiance. If such be not the true interpretation of this clause—if it conferred upon the people of the Territory the inherent right at any time they pleased to form a constitution and claim admission absolutely under it, how can we resist the application of those who formed the justly and universally repudiated Topeka constitution for admission under it into the Union of these States. Their constitution is first in point of time, and it will be observed that it is not the legislature of the Territory, but the "*people* of the Territory," that are left "perfectly free to form their own domestic institutions in their own way;" and hence, upon this hypothesis and language of the law, you need not apply for an enabling act even from the territorial legislature, because that language does not confer the power upon the legislature, but confers it "on the people;" and the high prerogative of making a constitution is not a legislative function. Besides, if the Kansas-Nebraska act enabled the legislature of Kansas to call a constitutional convention, why did President Pierce recommend, and why did the democratic Senate under his administration, with singular unanimity, pass an act authorizing Kansas to call a convention. Without pursuing this argument further, I conclude, from the high authorities cited and from the reasons already adduced—1st. That the legislature of Kansas was not competent to commit an act of political

suicide, and to subvert and overturn the very power of which they were but constituted the keepers, guardians, and preservers, by the Congress of the United States; and 2d, that the Kansas territorial law was in no sense an act which enabled its legislature thus to subvert the territorial existence at its pleasure.

It follows, then, that the Lecompton constitution is not an imperative legality. That it cannot challenge and demand our implicit and unquestioning submission, because it comes accredited to us by all the regularities and forms of law. But losing these high pretensions, which are all the title that it brings, it loses all. For, unless it can be sustained upon the ground of legitimacy, it has no other foundation to sustain it.

Mr. Chairman, let it not be inferred from anything I have said that I hold it illegal or rebellious for a territorial legislature to institute preliminary proceedings in order to bring about the transition from a territorial to a State condition. All I wish to establish is that their proceedings bind not the government of the United States, or render it in any sense imperative upon such goverment to admit such Territory into the Union as a State, merely because the territorial legislature have gone regularly through the formalities it may have instituted. The power of the United States, and the duty of the United States, stand untouched and unaffected by these subordinate territorial formalities, except so far as they may address themselves to the Congress of the United States as matter of petition, deserving its favorable consideration from their inherent merit, and not from their inherent legality.

2. If the Lecompton constitution be legal in form, are there not facts connected with it that render it invalid in fact? Mr. Chairman, this field of my argument has been perfectly exhausted. Let me add but a few words to what has been so much better said by so many others. And let me premise that the Congress of the United States is under no stress, or legal or political necessity, to admit new States into this confederacy. Neither Kansas, nor any other Territory, can demand as a right admission into this Union; although she may have formed a republican constitution, and although every man, woman and child within her borders desired it, yet the right and the power to admit or not to admit, according to its own will and pleasure, rests alone in the Congress of the United States.

This high power and unlimited discretion is expressed in the Constitution of the United States in these simple words: "New States may be admitted by the Congress into this Union." In the exercise of this high prerogative, perhaps the most morally grand of any which our current history exhibits, the Congress has the right, and it is its duty, to look with the utmost scrutiny and caution upon every fact, circumstance, and condition which bears upon the prudence, fitness, and propriety of the permanent relations it is about to establish between the new comer into the confederacy and the old; and if there be any time and any act which, above all others, should demand the exercise of the utmost good faith, forbearance, and honesty, it is this. I do not hesitate to declare that, if new States are to be precipitated into this confederacy contrary to the consent of a material portion of the old ones, and above all, with constitutions contrary to the ascer-

tained will of a material portion of the citizens of such new State, then are the sappers and miners at work beneath the foundations of the republic, and the enemy to its perpetuation has entered within its walls.

Mr. Chairman, if we could for a moment relieve ourselves of all party bias and excitement, we should find the facts pertaining to the Kansas question to be few and simple. A portion of its people are in favor of a constitution with slavery; another portion is in favor of a constitution without it. For years they have been waging a disreputable contest, disturbing the quiet and repose of the Union, and seeking political advantages of each other. Both of these parties have made themselves a constitution—one at Topeka, relying for its support upon your naked doctrine of Popular Sovereignty; the other at Lecompton, relying upon popular sovereignty, endorsed by Legislative Intervention without congressional sanction. The latter is much the best, I think, of the two, but both bad. Each party has endeavored, as far as possible, to ignore the other and to refrain from a recognition of the legal validity of its acts. The free State party believed it was outraged and trodden down by an invasion from Missouri, which gave despotic character to the legislature, inasmuch as it was elected, not by the people of the Territory but by alleged invaders, and hence, thereafter, it abstained from participating in elections authorized by this legislature. Whilst the slave State party denied the extent of the force and violence charged by their opponents, and justified themselves by the charge that emigrant aid societies had thrown upon Kansas, for the purpose of controlling its domestic institutions, a population as spurious as any introduced from adjacent States.

Thus waged the war, until delegates were authorized to be chosen by the territorial legislature to form a constitution preparatory to the admission of Kansas into the Union. From this point onward we have a right, and it is our duty, to look, in order to ascertain what it is proper for us to do. Delegates under the law were to be apportioned among the thirty-four counties of the Territory according to their population, to be ascertained by a census directed to be taken. This was fair and right, and ought to have been done; but, if we may believe the very highest authorities on this subject, it was not done, and by reason of the failure nearly one-half of the counties of the Territory were denied any representation in the convention that formed the constitution under which they were to live. Hear what Governor Walker and Secretary Stanton say on this subject. Governor Walker, in his letter to General Cass, of the 15th December, 1857, says:

"In nineteen of these counties there was no census, and therefore there could be no such apportionment there of delegates, based upon such census; and in fifteen of these counties there was no registry of voters. These fifteen counties, including many of the oldest organized counties of the Territory, were entirely disfranchised, and did not give, and (by no fault of their own) could not give, a solitary vote for delegates to the convention." * * *

"In fifteen counties out of thirty-four there was no registry, and not a solitary vote was given or could be given for delegates to the convention in any of these counties."

Governor Stanton, in corroboration of this statement, in his address to the people of the United States, says:

"The registration required by law had been imperfect in all the counties, and had been wholly omitted in one-half of them; nor could the people of these disfranchised counties vote in any adjacent county, as has been falsely suggested."

I could multiply proofs on this subject, but it is unnecessary. These

are sufficient, except to those determined not to believe. It is true that many of the free State party refused to vote for delegates to form the constitution. They professed to believe, and perhaps did believe, they would be defrauded out of their votes by their opponents, who had complete control of all the machinery by which the elections were to be conducted; and they were unwilling, as before stated, by voting at an election authorized by what they denominated the Bogus Legislature, to recognize the validity of its acts. I am not their advocate or defender. I think in all this they did wrong; and the other side were wrong in not taking the census and registration as far as practicable, to give to all the right and unquestionable American privilege of being represented in the body which was to ordain their highest law. The free State party in some of the counties made an attempt to elect delegates to the convention, notwithstanding the failure to take the census and registration. Their delegates were rejected. I will not dwell on these things. One fact of importance, during the progress of this election, occurred. It was the unequivocal, clear, distinct, and absolute promise of the governor, in his own name, and in the name of the President of the United States; it was the promise of his secretary, Mr. Stanton; it was the promise of Mr. Calhoun and many of his associates, that the constitution, when formed by the convention, should be submitted to the people for their ratification or rejection.

Goveror Walker, everywhere in Kansas, pledged his honor, by the approval, as he told the people, of the President and his cabinet, that the constitution should be submitted. Without stopping to refer to his inaugural, in which he is most emphatic on this point, I read from a speech of his delivered at Topeka, on the 8th of June, 1857, and published in the Topeka Statesman of the 9th:

"At the next election, in October, when you elect the territorial legislature, you can repeal these laws; and you can also, by a majority of your own votes, *adopt or reject* the constitution presented for your consideration next fall. Can you not peaceably decide this question in the mode pointed out by the act of Congress, if you, as you can and will, have a full opportunity of recording your vote? [A voice, 'How are we to get it?'] You will get it by the convention submitting the constitution to the vote of the whole people. [A voice, 'Who is to elect the convention? That is the grand question.'] Gentlemen, it is a comparatively small point by whom the constitution is submitted. Don't let us run away after shadows. The great substantial point is this: Will the whole people of Kansas next fall, by a fair election, impartially and fairly conducted by impartial judges, have an opportunity to decide for themselves what shall be their form of government, and what shall be their social institutions? I say they will; but I go a step further. [A voice, 'Have you the power?'] If I have not the power to bring it about, if the convention will not do it, I will join you in lawful opposition to their proceedings. [Cries of 'Good!' 'Good!' 'We hold you to your promise. Nothing can be asked fairer than that.']"

This, with me, is high matter of substance. Here you see a people, jealous of their rights, holding earnest question with their governor, and receiving from him solemn answer, touching those important rights upon which we are acting now; and, in consideration of his solemn pledge that the constitution should be fairly submitted to them, yielding it up indifferently to be formed by those who might be selected to do it, yet relying upon their own ultimate right to pass judgment upon it in the last resort. Shall we obtain the benefits of their non-action, without complying with the conditions upon which it was procured? Shall we, in any sense, fail to comply with the solemn assurances thus given? It will not do to say that Governor

Walker had no authority to make these assurances. That he had the authority of the President there is no doubt. He states it, and it is not denied. Whether he had authority or not, the confiding people believed he had, and it would be inconsistent with all my notions of propriety and honor to take advantage of their ignorance or credulity to wring from them advantages which they at least held sacred. I cannot—I will not do it.

How the constitution was submitted, Mr. Chairman, we all know. The slavery clause was only submitted; and, strange to tell, you could not vote against the slavery clause without swearing to support the constitution with slavery. An act like that needs no comment. I am a slaveholder and a friend of slavery; but, thank God, slavery needs no instrumentality like that for its extension, and its most dangerous adversaries are those who would identify it with violations of personal propriety and honor, and especially with an outrage upon the unquestioned American right of the people, when forming a constitution, to say whether it shall exist with them or not. When the slavery clause of the constitution was submitted, some 6,226 are reported to have voted for it; of which subsequent investigations have shown 2,720 were fraudulent, 569 votes were cast in favor of the constitution without slavery; thus leaving only 2,937 votes in favor of the constitution with slavery. So great was the excitement of the people of Kansas at the events I have thus detailed, that we are informed by Governor Stanton that they were almost on the point of civil war, which was only prevented by his convening the legislature.

In the hope (which proved successful) of restoring peace, a law was passed taking the sense of the entire people for and against the constitution, abolishing all test oaths, and leaving all free to vote just as they please. The result of that election was that 10,226 persons voted against the constitution. The friends of the Lecompton constitution did not vote. This election was held on the 4th January, 1858.

Mr. PEYTON, (interrogating.) I ask my colleague whether he believes that the 10,226 votes cast on the 4th of July were all *bona fide* legal votes?

Mr. UNDERWOOD. I will state, in all frankness, that it is my opinion —mere guess work, of course—that it is highly probable they were not. I will say, however, in all candor to my colleague, whose interruption is agreeable, or certainly not embarrassing to me, that there is no proof that any of that vote was fraudulent or illegal, and that all concurrent testimony agrees in proving that three-fourths or more of the inhabitants of Kansas are inimical to the constitution.

Mr. PEYTON. I would like to know from my colleague how he arrives at that conclusion?

Mr. UNDERWOOD. I am gratified at the opportunity of saying to my friend that I arrive at it from various sources of information—authentic sources which are open both to him and to myself—and from private statements from gentlemen of the highest respectability cognizant of the facts. It is the uniform report coming to us from Kansas, that there is a decided, an unqualified and almost an unmitigated disinclination on the part of the people to accept the Lecompton constitution. I trust my friend is answered. And now I ask him whether

he would force any constitution or form of government upon any people against their will?

Mr. PEYTON. I will reply to my colleague very frankly and very candidly that I would not.

Mr. UNDERWOOD. I knew, sir, that there was a Kentucky spirit beating in my friend's bosom which would keep him from such a course.

Mr. PEYTON. Will my friend permit me to state my own position in regard to this matter?

Mr. UNDERWOOD. I hope my colleague will not exhaust too much of my time.

Mr. PEYTON. I ask him whether in all State, county, and presidential elections it is not well known that there are more or less improper fraudulent votes polled? That there have been fraudulent votes polled in Kansas I have but little doubt, and I have as little doubt that in any election, from the first authorizing of the convention down to the final ratification, there have been votes enough withheld to have changed the result. My colleague says that if the fraudulent votes on the ratification of the constitution were thrown out there would be only 2,700 votes left. Well, that may be so; but then those who did not go to the polls authorized those who did to vote for them, and this left a clear majority of 2,700 votes in favor of the constitution. Now I ask my friend if he thinks that the votes cast on the 4th of January were all legal? I say that out of the 10,200 votes cast on that day against the Lecompton constitution 9,600 were polled in those registered counties where the pro-slavery party had cast 6,000 votes in favor of the constitution?

Mr. UNDERWOOD. In regard to the legality of that election, my friend will bear me witness that I have, at least, endeavored to establish the proposition that these elections were not of such a character as to demand of the people to come to the polls, and hence, that his position does not apply, that those who stay away from the election authorize those who go to vote for them. My friend asks me in regard to the 9,600 votes cast in the counties which had already given 6,000 majority in favor of the constitution; and I ask him if he will venture to say, on his integrity as a gentleman, and a statesman well informed on this subject, that he believes that the Lecompton constitution is the will and voice of the majority of the people of Kansas? I speak merely of the question of numbers, not of the question of legality, because I have disposed of that.

Mr. PEYTON. I shall answer your question fairly and properly.

Mr. UNDERWOOD. I know you will.

Mr. PEYTON. The remark which I made in regard to the 9,600 votes was for the purpose of calling my colleague's attention to this fact, that out of the 10,250 votes polled on the 4th of January, 9,600 votes were polled in registered counties where 6,000 votes had been polled in favor of the Lecompton constitution.

Mr. UNDERWOOD. I only asked you your opinion, whether you believe the Lecompton constitution was the will and voice of the majority of the people of Kansas, and whether the votes in its favor were fraudulent or not?

Mr. PEYTON. That is my opinion. I frankly tell you now that I do not know who has the majority. The list received is sufficient to

satisfy me that the contest is a close one, and I have no idea that the anti-Lecomptonites have such an overwhelming majority as they claim.

Mr. UNDERWOOD. While my friend may thus remain in doubt, the authentic documents produced before the Congress of the United States, and which have been heretofore adverted to by many a speaker, satisfy my mind and remove all doubt as to what the will of the people of Kansas is in respect to that constitution; and that is, that they are pre-eminently against the Lecompton constitution.

Thus stand the facts; and the naked question is, shall we admit Kansas into the Union at the instance and request of 2,937 of her people, or shall we not admit her at the like instance and request of 10,226. If figures could decide it, it seems to me easy of solution. If the sublime truths which underlie the American republics, whereby majorities govern in their organic laws, it seems to me the question is easy of solution. But we are told that the vote on the 4th of January came too late. Too late for what? Too late to tell us what the people of Kansas willed? Certainly not.

But we are told that it was irregular and revolutionary for them to have expressed their will in any other form, or at any other time, than in the form and manner directed in the Lecompton constitution itself. That is remarkable, for it gives to the Lecompton constitution validity before it assumes .to possess it—makes it the law before it is accepted by Congress—and assumes for the people of a Territory, in their colonial or dependent condition, the power whenever they see proper to call a convention, to make absolute laws, supplanting, by their own mere force, the pre-existing authority exercised by the territorial legislature established by Congress, and without the consent of Congress. But, again, is not this still more remarkable, as coming from those same Lecomptonites who contend that even after their constitution has successfully passed through all the forms of law, been ratified by the people, and approved by Congress, that immediately thereafter the people may disregard all its provisions in regard to its alteration or amendment, and change, alter, or abolish it at pleasure; and yet, before the constitution is established, while it is yet *in fieri*, or the progress of establishment, that same people can do no act to arrest it. Mr. Chairman, both these propositions cannot be true; and common sense has but little difficulty in determining which is true. I have already shown that there is no such legality in the proceedings which led to the formation of the Lecompton constitution as estops the Congress. Indeed, sir, Congress, in the admission of new States, has thus far been limited by few rules of legality, technicality, or form. It has acted upon the various cases according to the facts which attended them, ever carrying out the will of the people of the new State, however expressed, or however ascertained. One thing the Congress has never done, and that is to admit a State into the Union under a constitution contrary to the well known wishes of her people. This, if ever done, will first be done in Kansas. Her people have expressed, in every form they can command, their determined opposition to the Lecompton constitution. A majority of nearly ten thousand of her people tell you not to accept it as the fundamental organic law of the State; her legislature, by a unanimous vote, beseeches you not to do

so; and even the officers elected under the Lecompton constitution itself protest against your doing so.

"We, the officers elected under said constitution, do most respectfully and earnestly pray your honorable bodies not to admit Kansas into the Union under said constitution, and thus force upon an unwilling people an organic law against their *express will*, and in violation of every principle of popular government."

Signed by Governor, Lieutenant Governor, Secretary of State, State Treasurer, and Auditor.

Against these solemn and earnest appeals why should we seek to admit her under the Lecompton constitution? Above all, why should the south seek to admit her? What will we gain by it? Mr. Chairman, we shall gain a loss. We shall set instructions, which being taught, may return to plague the inventor. This will inevitably be the case in regard to the new theories now inculcated for the ready overthrow of constitutions by the unrestrained fiat of majorities. We show ourselves, perhaps, willing to extend our peculiar institution against the will of the majority of those amongst whom we would carry it, giving the majority opposed to us, should they have power, pretexts for disregarding our right and our property. But if these consequences did not follow, we gain no foothold for our slaves in Kansas, since the advocates of admission under the Lecompton constitution themselves tell the people there that they may turn slavery out as soon as you get the constitution in. I would have the south play no such paltry game. I would rejoice to have Kansas a slave State, if she could be permanently so with the consent of her people. I will not violate the general principles of free government, whereby the American people are authorized to establish their own institutions in their own way, for the paltry advantage of having Kansas forced into the Union under the Lecompton constitution as a slave State for a moment, to be scorned and kicked out instantly thereafter and forever.

But we are told that the admission of Kansas under the Lecompton constitution will localize the slavery excitement and give peace to the country.

I believe this to be one of the profoundest delusions that ever presented itself to an intelligent mind. Leave a people free to settle their own institutions, and they cannot long remain excited. Restrain them, and it is the inevitable outbreak of the American heart, north and south, and everywhere, to resist you. I believe in my conscience that to force the Lecompton constitution upon the people of Kansas against their consent, expressed in so many forms as I have shown you, will be to sound the tocsin for a wilder, and deeper, and far more pervading popular commotion than any you have ever known. It will not be confined to Kansas, but, rolling from its level plains, it will sweep through the northwestern prairies and the mountains of New England, until every hamlet and village, and town and county, will be instinct with excitement.

On the contrary, do justice to Kansas; do not to her what you would not have done to yourselves; encompass her not with nice technicalities of law; but suffer her people to speak and act their will; extend to them, in fact, what you profess to extend to all in theory—the right to regulate their domestic institutions in their own way, and my life for it, peace will prevail from one end of our beloved country to the other.